

David J. McGlothlin, Esq. (SBN: 253265)

david@westcoastlitigation.com

Joshua B. Swigart, Esq. (SBN: 225557)

josh@westcoastlitigation.com

Hyde & Swigart

411 Camino Del Rio South, Suite 301

San Diego, CA 92108

(619) 233-7770

(619) 297-1022

Attorneys for Plaintiff

Mahbub Rahman

FILED

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RICHARD W. WIDEMAN
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DMR

Mahbub Rahman

Plaintiff,

v.

Commercial Recovery Systems,
Inc., Randy Stone and Corey
Cottingham,

Defendants.

Case No. **CV 12 4535**

Complaint For Damages

Jury Trial Demanded

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

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1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system
4 and grantors of credit to consumers are dependent upon the collection of just
5 and owing debts and that unfair or deceptive collection practices undermine
6 the public confidence that is essential to the continued functioning of the
7 banking and credit system and sound extensions of credit to consumers. The
8 Legislature has further determined that there is a need to ensure that debt
9 collectors exercise this responsibility with fairness, honesty and due regard
10 for the debtor's rights and that debt collectors must be prohibited from
11 engaging in unfair or deceptive acts or practices.

12 3. Mahbub Rahman, (Plaintiff), through Plaintiff's attorneys, brings this action to
13 challenge the actions of Commercial Recovery Systems, Inc., Randy Stone
14 and Corey Cottingham, ("Defendants"), with regard to attempts by
15 Defendants to unlawfully and abusively collect a debt allegedly owed by
16 Plaintiff, and this conduct caused Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, all the conduct engaged in by Defendants took place
23 in California.

24 7. Any violations by Defendants were knowing, willful, and intentional, and
25 Defendants did not maintain procedures reasonably adapted to avoid any such
26 violation.

JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
9. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").
10. Because Defendants do business within the State of California, personal jurisdiction is established.
11. Venue is proper pursuant to 28 U.S.C. § 1391.
12. At all times relevant, Defendants conducted business within the State of California.

PARTIES

13. Plaintiff is a natural person who resides in the City of San Francisco, State of California.
14. Defendants are located in the City of Dallas, in the State of Texas.
15. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
16. Defendants are persons who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).
17. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

- 1 18. Defendants, in the ordinary course of business, regularly, on behalf of
2 themselves, or others, engage in debt collection as that term is defined by
3 California Civil Code § 1788.2(b), are therefore debt collectors as that term is
4 defined by California Civil Code § 1788.2(c).
- 5 19. This case involves money, property or their equivalent, due or owing or
6 alleged to be due or owing from a natural person by reason of a consumer
7 credit transaction. As such, this action arises out of a consumer debt and
8 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).
- 9 20. Plaintiff is informed and believes and thereon alleges that Defendants Randy
10 Stone and Corey Cottingham that contacted Plaintiff were acting as agents of
11 Defendant Commercial Recovery Systems, Inc.; Therefore, Defendant
12 Commercial Recovery Systems, Inc. can be held responsible and is
13 vicariously liable for the conduct of Defendants Randy Stone and Corey
14 Cottingham, and vice versa, and Plaintiff incorporates all theories of vicarious
15 liability within this Complaint, including, but not limited to, respondeat
16 superior.

17 **FACTUAL ALLEGATIONS**

- 18 21. Sometime before July 6, 2012, Plaintiff is alleged to have incurred certain
19 financial obligations.
- 20 22. These financial obligations were primarily for personal, family or household
21 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
22 §1692a(5).
- 23 23. These alleged obligations were money, property, or their equivalent, which is
24 due or owing, or alleged to be due or owing, from a natural person to another
25 person and are therefore a “debt” as that term is defined by California Civil
26 Code §1788.2(d), and a “consumer debt” as that term is defined by California
27 Civil Code §1788.2(f).
- 28

- 1 24. Sometime thereafter, but before July 6, 2012, Plaintiff allegedly fell behind in
2 the payments allegedly owed on the alleged debt. Plaintiff currently takes no
3 position as to the validity of this alleged debt.
- 4 25. Subsequently, but before July 6, 2012, the alleged debt was assigned, placed,
5 or otherwise transferred, to Defendants for collection.
- 6 26. On or about July 6, 2012, Defendant Corey Cottingham began calling
7 Plaintiff demanding payment of the alleged debt.
- 8 27. This communication to Plaintiff was a "communication" as that term is
9 defined by 15 U.S.C. § 1692a(2), and an "initial communication" consistent
10 with 15 U.S.C. § 1692g(a).
- 11 28. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b)
12 defines that phrase, and an "initial communication" consistent with Cal. Civ.
13 Code § 1812.700(b).
- 14 29. Defendant Corey Cottingham left Plaintiff a voicemail stating that Plaintiff or
15 "their attorney" should contact Defendants "regarding a case that has been
16 filed against you."
- 17 30. In all Defendants' voicemails Defendants failed to identify themselves and
18 failed to disclose that Defendants were attempting to collect a debt and that
19 any information obtained would be used for that purpose.
- 20 31. Through this conduct, Defendants violated 15 U.S.C. § 1692d(6) and 15
21 U.S.C. § 1692e(11).
- 22 32. Because this violated certain portions of the federal Fair Debt Collection
23 Practices Act as these portions are incorporated by reference in the Rosenthal
24 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
25 this conduct or omission violated Cal. Civ. Code § 1788.17.
- 26 33. Through this conduct, Defendants placed a telephone call without disclosure
27 of the caller's identity. Consequently, Defendant violated Cal. Civ. Code §
28 1788.11(b).

- 1 34. Defendant Commercial Recovery Systems, Inc. failed within five days after
2 its initial communication with Plaintiff, to provide written notification
3 containing a statement that unless Plaintiff, within thirty days after receipt of
4 that notice, disputed the validity of the debt, or any portion thereof, Defendant
5 Commercial Recovery Systems, Inc. would assume the debt was valid, or
6 failed within five days after its initial communication with Plaintiff to provide
7 a written notice containing a statement that if Plaintiff notified Defendant
8 Commercial Recovery Systems, Inc. in writing, within the thirty-day period
9 that the debt, or any portion thereof, was disputed, Defendant Commercial
10 Recovery Systems, Inc. would obtain verification of the debt or a copy of a
11 judgment against Plaintiff and a copy of such verification or judgment would
12 be mailed to Plaintiff by Defendant Commercial Recovery Systems, Inc. and
13 that Defendant Commercial Recovery Systems, Inc. would provide Plaintiff
14 with the name and address of the original creditor. This omission by
15 Defendant Commercial Recovery Systems, Inc. violated 15 U.S.C. § 1692g.
- 16 35. Because this omission violated the language in 15 U.S.C. § 1692g, Defendant
17 Commercial Recovery Systems, Inc. also violated Cal. Civ. Code § 1788.17
18 as it incorporates 15 U.S.C. § 1692g.
- 19 36. Defendant Commercial Recovery Systems, Inc., a third party debt collector,
20 failed, in the first written notice initially addressed to Plaintiff's California
21 address in connection with collecting the alleged debt by Defendant
22 Commercial Recovery Systems, Inc., pursuant to Cal. Civ. Code § 1812.700,
23 and in the manner prescribed by Cal. Civ. Code § 1812.700(b) and Cal. Civ.
24 Code § 1812.701(b), to provide a notice to Plaintiff as prescribed in Cal. Civ.
25 Code § 1812.700(a). Consequently, pursuant to Cal. Civ. Code § 1812.702,
26 this omission by Defendant Commercial Recovery Systems, Inc. violated the
27 Rosenthal Act.
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- 1 37. Plaintiff is informed and believes and thereupon alleges that Defendant has
2 not filed a case against Plaintiff in an attempt to collect an alleged debt, and
3 therefore Defendant was lying in the voicemails left for Plaintiff by
4 Defendant.
- 5 38. Through this conduct, Defendants engaged in conduct the natural
6 consequence of which was to harass, oppress, or abuse a person in connection
7 with the collection of a debt. Consequently, Defendants violated 15 U.S.C. §
8 1692d.
- 9 39. Through this conduct, Defendants used a false, deceptive, or misleading
10 representation or means in connection with the collection of a debt.
11 Consequently, Defendants violated 15 U.S.C. § 1692e and 15 U.S.C. §
12 1692e(10).
- 13 40. Through this conduct, Defendants made a false representation concerning the
14 character, amount, or legal status of a debt. Consequently, Defendants
15 violated 15 U.S.C. § 1692e(2)(A).
- 16 41. Through this conduct, Defendants threatened to take action that cannot legally
17 be taken or that is not intended to be taken. Consequently, Defendants
18 violated 15 U.S.C. § 1692e(5).
- 19 42. Through this conduct, Defendants used an unfair or unconscionable means to
20 collect or attempt to collect any debt. Consequently, Defendants violated 15
21 U.S.C. § 1692f.
- 22 43. Because this violated certain portions of the federal Fair Debt Collection
23 Practices Act as these portions are incorporated by reference in the Rosenthal
24 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
25 this conduct or omission violated Cal. Civ. Code § 1788.17.
- 26 44. On or about July 13, 2012, July 18, 2012, July 27, 2012, July 28, 2012 and
27 August 3, 2012, Defendant Randy Stone called Plaintiff and made similar
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1 threats as in the July 6, 2012 call. Defendant also referenced a case number
2 for a case that had allegedly been filed against Plaintiff.

3 45. On several occasions Defendant Randy Stone also threatened to file a 1099
4 with the Internal Revenue Service.

5 46. In these voicemails Defendants again failed to identify themselves and failed
6 to disclose that Defendants were attempting to collect a debt and that any
7 information obtained would be used for that purpose.

8 47. Through this conduct, Defendants violated 15 U.S.C. § 1692d(6) and 15
9 U.S.C. § 1692e(11).

10 48. Because this violated certain portions of the federal Fair Debt Collection
11 Practices Act as these portions are incorporated by reference in the Rosenthal
12 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
13 this conduct or omission violated Cal. Civ. Code § 1788.17.

14 49. Through this conduct, Defendants placed a telephone call without disclosure
15 of the caller's identity. Consequently, Defendant violated Cal. Civ. Code §
16 1788.11(b).

17 50. Through this conduct, Defendants engaged in conduct the natural
18 consequence of which was to harass, oppress, or abuse a person in connection
19 with the collection of a debt. Consequently, Defendants violated 15 U.S.C. §
20 1692d.

21 51. Through this conduct, Defendants used a false, deceptive, or misleading
22 representation or means in connection with the collection of a debt.
23 Consequently, Defendants violated 15 U.S.C. § 1692e and 15 U.S.C. §
24 1692e(10).

25 52. Through this conduct, Defendants made a false representation concerning the
26 character, amount, or legal status of a debt. Consequently, Defendants
27 violated 15 U.S.C. § 1692e(2)(A).
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53. Through this conduct, Defendants threatened to take action that cannot legally be taken or that is not intended to be taken. Consequently, Defendants violated 15 U.S.C. § 1692e(5).
54. Through this conduct, Defendants used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendants violated 15 U.S.C. § 1692f.
55. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.
56. Plaintiff returned Defendants call and during this conversation Defendant made the same threats directly to Plaintiff.
57. Defendants abusive actions concentrated in a short amount of time overwhelmed Plaintiff causing him significant actual damages.
58. Due to Defendants' abusive actions, Plaintiff suffered mental anguish type damages which manifested in symptoms including but not limited to sleeplessness, hopelessness, helplessness, pessimism, nervousness, restlessness, irritability, depression, sadness, stress, anxiety, embarrassment, changes in appetite, headaches, digestive problems, and fear of answering the telephone, which all greatly impacted Plaintiff's employment and personal relationships.

CAUSES OF ACTION

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

59. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

60. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

61. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every defendant, jointly and severally.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

62. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

63. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

64. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every defendant, jointly and severally.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);

- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

65. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: August 24, 2012

By: _____

Joshua B. Swigart
Attorneys for Plaintiff

HYDE & SWIGART
Phoenix, Arizona